

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE APRIL 27, 2009

SENATE BILL

No. 660

Introduced by Senator Wolk

February 27, 2009

An act to ~~add Section 1923.1 to~~ amend Section 1923.5 of, and to add Section 1923.1 to, the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Wolk. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees, *and prohibits a lender from accepting a final and complete reverse mortgage application without first receiving from the applicant, or his or her representative, a certification that the applicant has received loan counseling.*

This bill would provide that a lender, broker, person, or entity who recommends the purchase of a reverse mortgage in anticipation of financial gain owes the prospective borrower a duty of honesty, good faith, and fair dealing ~~and must have reasonable belief that the borrower understands the risks, benefits, and reasonable alternatives involved in the purchase of a reverse mortgage.~~ *This bill would revise the disclosure notice provided to reverse mortgage applicants and would prohibit a*

lender from accepting a reverse mortgage loan application unless the lender provides the prospective borrower, prior to his or her meeting with the counseling agency, with a specified written checklist that conspicuously alerts the prospective borrower of subjects that he or she should discuss with the loan counselor. This bill would require that the counselor and the prospective borrower sign the checklist and return it to the lender. The bill would prohibit approval of the loan application until the signed checklist is provided to the lender. The bill would require that a copy of the checklist be provided to the borrower.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1923.1 is added to the Civil Code, to
2 read:

3 1923.1. Any lender, broker, person, or entity who recommends
4 the purchase of a reverse mortgage in anticipation of financial gain
5 owes the prospective borrower a duty of honesty, good faith, and
6 ~~fair dealing and shall have reasonable belief that the borrower~~
7 ~~understands the risks, benefits, and reasonable alternatives involved~~
8 ~~in the purchase of a reverse mortgage. These duties are in addition~~
9 ~~to any other duties, express or implied, that may exist. dealing.~~
10 *The duties set forth in this section shall not be construed to limit*
11 *or narrow any other duty of a lender, broker, person, or entity.*

12 SEC. 2. Section 1923.5 of the Civil Code is amended to read:

13 1923.5. (a) No reverse mortgage loan application shall be
14 taken by a lender unless the loan applicant, *prior to receiving*
15 *counseling*, has received from the lender the following plain
16 language statement in conspicuous 16-point type or larger, advising
17 the prospective borrower about counseling prior to obtaining the
18 reverse mortgage loan:

19

20

21

22 IMPORTANT NOTICE
23 TO REVERSE MORTGAGE LOAN APPLICANT

24

25 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
26 TRANSACTION ~~THAT PROVIDES A MEANS OF USING THE~~
~~EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE~~

~~VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL~~
~~INCOME. IF YOU DECIDE TO OBTAIN A REVERSE~~
~~MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL~~
~~DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND~~
~~FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.~~
~~IT IS THEREFORE IMPORTANT TO UNDERSTAND THE~~
~~TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.~~
~~BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE~~
~~REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN~~
~~COUNSELOR. A LIST OF APPROVED COUNSELORS WILL~~
~~BE PROVIDED TO YOU BY THE LENDER.~~
~~YOU MAY ALSO WANT TO DISCUSS YOUR DECISION~~
~~WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU~~
~~RELY FOR FINANCIAL ADVICE.~~

(b) (1) In addition to the plain statement notice described in subdivision (a), no reverse mortgage loan application shall be taken by a lender unless the lender provides the prospective borrower, prior to his or her meeting with a counseling agency on reverse mortgages, with a written checklist that conspicuously alerts the prospective borrower, in 12-point type or larger, that he or she should discuss with the agency counselor the following issues:

(A) How unexpected medical or other events that cause the prospective borrower to move out of the home earlier than anticipated will impact the total loan cost.

(B) The extent to which the prospective borrower's financial needs would be better met by options other than a reverse mortgage, including, but not limited to, less costly home equity lines of credit, property tax deferral programs, or governmental aid programs.

(C) Whether the prospective borrower intends to use the proceeds of the reverse mortgage to purchase an annuity or other insurance products and the consequences of doing so.

(D) The effect of repayment of, or inability to repay, the loan on residents who are not borrowers after all borrowers have died or permanently left the home.

(E) The prospective borrower's ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable.

1 (F) *The impact that the reverse mortgage may have on the*
2 *prospective borrower's tax obligations, eligibility for government*
3 *assistance programs, and the effect that losing equity in the home*
4 *will have on the borrower's estate and heirs.*

5 (G) *The ability of the borrower to finance alternative living*
6 *accommodations such as assisted living or long-term care nursing*
7 *home residency, after the borrower's equity is depleted.*

8 (2) *The checklist required in paragraph (1) shall be signed by*
9 *the agency counselor and by the prospective borrower and returned*
10 *to the lender along with the certification of counseling required*
11 *under subdivision (k) of Section 1923.2, and the loan application*
12 *shall not be approved until the signed checklist is provided to the*
13 *lender. A copy of the checklist shall be provided to the borrower.*